

ARIZONA SUPERIOR COURT, PIMA COUNTY

HON. RICHARD D. NICHOLS  
JUDGE

CASE NO. CR20083756

COURT REPORTER: Denise Warren  
Courtroom - 675

DATE: February 2, 2010

STATE OF ARIZONA

Nicol R. Green and Jesse L. Delaney  
Counsel for State

VS.

JONATHAN DAVID SWIHART  
Defendant

Peter E. Herberg  
Counsel for Defendant

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**MINUTE ENTRY**

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**JURY TRIAL--DAY ONE**

10:29 a.m. Defendant present, out of custody.

OUT OF THE PRESENCE OF THE PROSPECTIVE JURY:

State's Exhibits 1 through 35 are identified pursuant to the Exhibit List attached to and made a part of this Minute Entry.

The bailiff seats the first twenty-six prospective jurors in the box.

Clerk's Note: It is later discovered that only twenty-five prospective jurors were seated.

Ms. Delaney and Mr. Herberg announce ready to proceed.

All prospective jurors are sworn on *voir dire*.

The Court states the nature of the case and questions the prospective jurors generally and individually on *voir dire*.

The following jurors are excused by the Court for cause, and the below are called to serve in their stead:

EXCUSED

CALLED

Jose Nogales

Marion Werner

George Bon

Tyler Mott

Cecilia Federico

Michael Tone

Debra Kellams

Gregory Harris

Michael Wlasiuk

Donna Coleman

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Vincent K. Heitholt  
Deputy Clerk

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Chin Lewis	Ken Gallardo
Marion Werner	Michael Audelo
Katherine Stevens	Rita Lynch
Barbara Nieman	Belinda Willingham
Ken Gallardo	Michele Baker
Michael Audelo	Rovann Cleveland
Rita Lynch	Nicholas Dominguez
Nicholas Dominguez	Kylie Koepsel
Kylie Koepsel	Paul Uricchio
Paul Uricchio	Beverly Underwood
Beverly Underwood	Korjal Burhans

AT THE BENCH:

Ms. Delaney and Mr. Herberg indicate they have no challenges to prospective jurors at this point.

IN OPEN COURT:

Upon Ms. Delaney's request at the bench,

The Court further questions the prospective jury on *voir dire* regarding any prior personal victimization.

Ms. Green questions the prospective jurors generally and individually on *voir dire*.

The following jurors are excused for cause, and the below are called to serve in their stead:

EXCUSED	CALLED
MarcAnthony Avila	Irene Cadena-Rupp
Rosalia Espinoza	Mario Favela

12:07 p.m. The prospective jury is admonished and excused until 1:30 p.m. on this date.

OUT OF THE PRESENCE OF THE PROSPECTIVE JURY:

AT THE BENCH:

Prospective juror number 8 advises the Court of a possible connection to the County Attorney's office.

The bailiff advises the Court that prospective juror number 24 has a medical emergency and wishes to be excused.

There being no objection by the State or Defendant,

Prospective juror number 24, Belinda Willingham, is excused.

12:10 p.m. Court stands at recess until 1:30 p.m. on this date.

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Vincent K. Heitholt  
Deputy Clerk

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1:27 p.m. Defendant present, out of custody.

Same counsel present; Denise Warren reporting.

OUT OF THE PRESENCE OF THE PROSPECTIVE JURY:

Mr. Herberg advises the Court of contact with prospective juror number 5.

IN THE PRESENCE OF THE PROSPECTIVE JURY:

Prospective juror Jayme Strong is called to serve in Belinda Willingham's stead.

The Court further questions the prospective jurors on *voir dire*.

The following jurors are excused by the Court for cause, and the below are called to serve in their stead:

EXCUSED

CALLED

Irene Cadena-Rupp

Jessica Woelbling

Jessica Woelbling

Patricia Gloy

Mr. Herberg questions the jury generally and individually on *voir dire*.

The following jurors are excused by the Court for cause, and the below are called to serve in their stead:

EXCUSED

CALLED

Wayne Everett

Douglas Humphries

Douglas Humphries

Patricia Gloy

Ms. Green and Mr. Herberg pass the panel for cause.

OUT OF THE PRESENCE OF THE PROSPECTIVE JURY:

Mr. Herberg argues that the Court affirm a previous order regarding the preclusion of witness Breanne Schneider and moves to preclude witness Michael Katz from the State's case in chief.

Ms. Green confirms that the State only plans to call Breanna Schneider as a rebuttal witness and does not intend to call Michael Katz as a witness in the State's case in chief.

AT THE BENCH:

The Court and counsel discuss general trial matters and possible security concerns.

IN OPEN COURT:

IN THE PRESENCE OF THE PROSPECTIVE JURY:

Counsel having made their peremptory strikes out of the presence of the prospective jury, the clerk is directed to call the jurors to decide this case.

AT THE BENCH:

The Court and counsel discuss possible solutions to a missing juror as a result of there being only

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Deputy Clerk

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twenty-five prospective jurors seated in the box.

In order to maintain two alternate jurors for this case,

Ms. Green waives a peremptory strike.

IN OPEN COURT:

The clerk continues to call the jurors into the box, and the following fourteen jurors are sworn to decide this case:

- |                     |                        |
|---------------------|------------------------|
| 1. Michael Tone     | 8. Mario Favela        |
| 2. Gregory Harris   | 9. Disha Parikh        |
| 3. Donna Coleman    | 10. Philip Sounnakhone |
| 4. Claudia Andersen | 11. Armando Sotelo     |
| 5. Thomas Duby      | 12. Jayme Strong       |
| 6. Michele Baker    | 13. Meaghan Hays       |
| 7. Gerard McCoy     | 14. Deborah Patton     |

The Court reads the Indictment, states the defendant's plea of not guilty thereto, and instructs the jurors of the rules it must follow in considering this case; a copy of Preliminary Jury Instructions is provided to each juror.

Ms. Delaney and Mr. Herberg make opening statements to the jury.

FOR THE STATE:

Fernando Olague is sworn, examined by Ms. Green, cross-examined, questioned by the jury through the Court, and excused.

OUT OF THE PRESENCE OF THE JURY:

Mr. Herberg moves to invoke the rule, which motion is GRANTED.

No witnesses are present at this time.

IN THE PRESENCE OF THE JURY:

Patricia Trevino is sworn, examined by Ms. Green, cross-examined, questioned by the jury through the Court, and excused.

4:33 p.m. The jury is admonished and excused until 9:30 a.m. on February 3, 2010.

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OUT OF THE PRESENCE OF THE JURY:

AT THE BENCH:

Juror number 1 advises the Court that he posted information about his inclusion in the jury pool for this case on a social networking site.

IN OPEN COURT:

Juror number 1 states the same for all counsel. There are no objections to this juror serving on the jury by the State or the Defendant.

4:36 p.m. Court stands at recess.

cc: Jesse L. Delaney, Esq.  
Nicol R. Green, Esq.  
Peter E. Herberg, Esq.  
Pretrial Services

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Vincent K. Heitholt  
Deputy Clerk

**PIMA COUNTY SUPERIOR COURT**

STATE OF ARIZONA

Plaintiff

VS.

JONATHAN DAVID SWIHART

Defendant

Nicol R. Green and Jesse Delaney  
Attorney for Plaintiff

Peter E. Herberg  
Attorney for Defendant

Case No. CR20083756

Date: February 2, 2010

Type of Hearing: Jury Trial

Hon. Richard D. Nichols

**EXHIBIT LIST**

<b>Iden</b>	<b>Offer</b>	<b>Obj</b>	<b>Adm</b>	<b>Description</b>	<b>Disposition</b>	<b>Sent</b>	<b>Not Sent</b>
				IDENTIFIED FEBRUARY 2, 2010			
1				Copy of TPD Supplementary Report – Valenzuela			
2				Copy of TPD Supplementary Report – Altman			
3				Copy of TPD Supplementary Report – Pruitt			
4				Copy of TPD Supplementary Report – Evans			
5				Copy of TPD Supplementary Report – Huegsen			
6				Copy of TPD Supplementary Report – Nottingham			
7				Copy of TPD Supplementary Report – Carroll			
8				Typed list of outgoing and incoming calls, 9/6 and 9/7			
9				Typed list of text messages, Inbox			
9A				Typed list of text messages, Outbox Nicole			
10				Copy of TPD Supplementary Report – Pike			
11				Copy of TPD Crime Laboratory Report – Powell			
12				Copy of Investigative Supplemental Report – St. John			

Ex. Received From: \_\_\_\_\_ Date \_\_\_\_\_ By \_\_\_\_\_

13				Copy of Autopsy Report – Nicole Katz			
14				Copy of Instruction Manual for Ruger P-Series			
15				Copy of transcript of interview – Olague			
16				Copy of transcript of interview – Trevino			
17				Copy of transcript of interview – Soto			
18				Copy of transcript of interview – Ramirez (9:02)			
19				Copy of diagram – “By Joshua”			
20				Copy of transcript of interview – Reese			
21				Copy of transcript of interview – Aragando			
22				Copy of transcript of interview – Swihart			
23				Sealed paper envelope allegedly containing Baretta lock for gun			
24				Sealed paper envelope allegedly containing 9mm cartridge casing, spent			
25				Sealed paper envelope allegedly containing set of car and house keys			
26				Sealed paper envelope allegedly containing 9mm Luger live round			
27				Sealed paper envelope allegedly containing Baretta 9mm magazine with 14 rounds			
28				Sealed paper envelope allegedly containing 9mm Luger live round			
29				Sealed paper envelope allegedly containing 9mm Luger live round			
30				Sealed paper envelope allegedly containing bullets, 47-9mm/ 33-.22/ 1-30-30			
31				Sealed brown paper bag allegedly containing black leather paddle holster			
32				Sealed brown paper bag allegedly containing gun accessories			

[illegible]